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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re ANTHONY W., a Person Coming
Under the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

ANTHONY W.,

Defendant and Appellant.

G051137

(Super. Ct. No. DL049933)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Lewis W. Clapp, Judge. Affirmed.

Michelle C. Zehner, under appointment by the Court of Appeal, for
Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant
Attorney General, Julie L. Garland, Assistant Attorney General, Eric A. Swenson and
Daniel Hilton, Deputy Attorneys General, for Plaintiff and Respondent.

* * *

Anthony W. admitted committing assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1); count 1), two counts of civil rights violations (Pen. Code, § 422.6, subd. (a); counts 2, 4), criminal threats (Pen. Code, § 422; count 3), and admitted a hate crime enhancement after the juvenile court declined to find him suitable for deferred entry of judgment (DEJ) (Welf. & Inst. Code, §§ 790, 791; all statutory citations are to this code unless noted). The court placed Anthony on probation subject to various terms and conditions. Anthony contends the court abused its discretion in declining to find him suitable for DEJ. We do not find the contention persuasive and therefore affirm the judgment.

I

FACTUAL AND PROCEDURAL BACKGROUND

In June 2014, the Orange County District Attorney filed a wardship petition (§ 602), as amended in November 2014, alleging 15-year-old minor Anthony W. committed the offenses listed above. In October, the district attorney filed a statement reflecting Anthony was eligible for DEJ. (§§ 790, 791.) Anthony's lawyer requested a hearing, and the court directed the probation department to prepare a suitability report.

According to the probation summary, a deputy sheriff working as a school resource officer reported that on June 4, 2014, Anthony made two hooded masks resembling those used by the Ku Klux Klan to harass three African-American students. Victim 1 reported Anthony had been calling him the "N" word for the previous two weeks and threatened to "f" him up. Victim 2 stated he saw Anthony making the mask in class and Anthony remarked he hated "N's" and wanted to kill all of them at school. At the end of class, Anthony approached Victim 2 and pressed the metal point of a pair of orange fabric scissors against Victim 2's stomach, pressing inward twice using a stabbing motion. He then walked out of class. A third youth stated Anthony called out his name so the youth would see Anthony wearing the mask. This youth removed the mask from Anthony, tore it up, and threw it in a trash can. At lunchtime, he heard his name being

called by a group of youths and saw one of them (not Anthony) wearing a similar mask. One of the youths in this group disclosed that Anthony had given the mask to the boy who wore it during lunch.

The deputy interviewed Anthony, who claimed he intended only to make a “hoodie” out of the fabric, and accused another student of putting it on to harass the victim. The deputy reinterviewed Anthony after speaking with the victims, and Anthony admitted he had lied during the prior interview. He also admitted wearing a mask in class, threatening Victim 1, and confronting Victim 2 with the mask and scissors. Victim 2 asserted Anthony minimized his culpability in describing the scissors incident to the officer. According to the victim, Anthony also made statements that his parents owned guns for hunting. In a later interview in the presence of his mother, Anthony admitted making the masks and wearing one in class, but denied passing the masks around or encouraging other students to wear one. He also denied confronting Victim 1 and threatening to “f- him up,” and denied confronting Victim 2. Asked why he made prior statements to the contrary, Anthony replied, “I don’t know.” He admitted calling African-American students “N’s,” but denied threatening to kill them.

Anthony’s mother felt her son had been unjustly accused, did not believe her son threatened the victim with scissors, and felt the “school blew the whole thing out of proportion.” She asserted Anthony had never been violent or racist toward anyone, and had a black girlfriend. Mother believed Anthony was making a hood for a jacket and may have been coaxed by friends to act out. She acknowledged Anthony “has some level of immaturity” and “was not thinking and has no filter which causes him to make impulsive decisions.” She felt probation could help her son “understand there are consequences for his actions even though he means no harm.”

The suitability report revealed Anthony was the younger of two children in a close knit family. Anthony’s father was self-employed and Anthony’s mother worked in the home. Anthony had been diagnosed with attention deficit hyperactivity disorder in

elementary school and had been prescribed medication at various times, but currently was not taking anything. Mother described Anthony as respectful and obedient at home. Mother disclosed Anthony had smoked marijuana when he was 13 or 14, but she has not observed him to be under the influence of drugs or alcohol and does not suspect he uses drugs. Anthony was enrolled as a freshman at a continuation high school, and had suffered one suspension. Anthony reported he earned average grades and had some disruptive behavior at school that resulted in suspensions. He planned to study business in college so he could take over the family's plumbing business.

The probation officer observed "the malevolent and inflammatory nature" of Anthony's actions was "extremely disconcerting," but there was "no indication he ha[d] ever exhibited any other significant problems at home, in school or within the community, and his involvement in the offense seems to have been a woefully misguided departure from his usual character. It appears the minor possesses the motivation and potential necessary to satisfactorily make amends for his behavior and avoid further legal problems." The probation officer concluded "minor [was] a suitable candidate for DEJ and should be afforded an opportunity to demonstrate compliance with this program before more restrictive measures are considered." The probation officer suggested Anthony perform a "substantial number" of community service hours, visit the Museum of Tolerance and write a report on his experience, and attend court-ordered counseling "to ensure factors which may have contributed to his delinquency are adequately addressed."

The juvenile court conducted a suitability hearing in December 2014. Counsel submitted the issue on the suitability report and noted Anthony had begun anger management counseling, he was doing well at his new school and on course to graduate early and there had been no issues at home. Counsel argued the issue was whether Anthony's "parents have adequate supervision of him to be able to work in conjunction with the [DEJ] program," and "all indications are . . . that they do have that control"

The court denied Anthony's request for DEJ, explaining Anthony's conduct went beyond a prank and was hateful and dangerous. The court found Anthony had "a lot of potential," noting Anthony had "taken control of things" at school and was respectful, but he required "more supervision until [the court was] sure that there is not a problem" The court stated Anthony could return in a year and if he was doing well "we'll talk about withdrawing the plea, dismissing the case"

Anthony waived his rights and admitted the allegations. The juvenile court declared the assault was a felony and the other offenses were misdemeanors, and declared Anthony a ward of the juvenile court. The court placed Anthony on supervised probation on various terms and conditions specified in a disposition agreement.

II

DISCUSSION

Anthony contends the juvenile court abused its discretion in finding him unsuitable for DEJ. He argues the court's comments demonstrate the court believed Anthony would benefit from the education, treatment, and rehabilitation offered under the DEJ program and therefore the court erred in finding him unsuitable.

The DEJ statutes authorize the juvenile court to place the minor on probation without declaring him or her to be a ward of the court after the minor meets certain eligibility requirements and admits the allegations. (*In re D.L.* (2012) 206 Cal.App.4th 1240, 1243 (*D.L.*)). The court must dismiss the charges if the minor successfully completes probation. (*In re Joshua S.* (2011) 192 Cal.App.4th 670, 675-676 (*Joshua S.*); see §§ 791, subd. (a)(3); 793, subd. (c).) Here, Anthony was eligible for DEJ because he was a first-time offender and his felony offense was not one of the enumerated offenses in section 707, subdivision (b).¹

¹ Assault with a deadly weapon where the weapon is scissors is not listed in section 707, subdivision (b). (Cf. § 707, subs. (b)(13) [assault with a firearm], (b)(14)

“It is the mandatory duty of the juvenile court to either grant DEJ summarily or examine the record, conduct a hearing, and determine whether the minor is suitable for DEJ, based upon whether the minor will derive benefit from ‘education, treatment, and rehabilitation.’ [Citations.] While the court is not required to grant DEJ, it is required to ‘follow specified procedures and exercise discretion to reach a final determination once the mandatory threshold eligibility determination is made.’ [Citation.]” (*D.L.*, *supra*, 206 Cal.App.4th at pp. 1243-1244.) “The [juvenile] court thus ‘has the ultimate discretion to rule on the suitability of the minor for DEJ after consideration of the factors specified in [former] rule 1495(d)(3) [now rule 5.800(d)] and section 791, subdivision (b), and based upon the “standard of whether the minor will derive benefit from “education, treatment, and rehabilitation” rather than a more restrictive commitment. [Citations.]” [Citations.]” (*Joshua S.*, *supra*, 192 Cal.App.4th at p. 677; Cal. Rules of Court, rule 5.800(d) [suitability report must address child’s age, maturity, educational background, family relationships, motivation, any treatment history, and any other relevant factors regarding the benefit the child would derive from education, treatment, and rehabilitation efforts]; see *In re C.W.* (2012) 208 Cal.App.4th 654, 660 [juvenile trial court has the ultimate discretion to rule on the minor’s suitability for DEJ after considering relevant factors].)

Anthony places principal reliance on *Martha C. v. Superior Court* (2003) 108 Cal.App.4th 556. There, the wardship petition alleged Martha possessed marijuana for sale and transported marijuana. The probation department concluded Martha would benefit from the DEJ program. The juvenile court denied DEJ citing the social policy implications of granting DEJ to “people who engage in these kind of offenses.” (*Id.* at p. 560.) The appellate court concluded the juvenile court abused its discretion in denying DEJ because “it did so not because she was unamenable to education, treatment or

[assault by any means of force likely to produce great bodily injury], (b)(18) [felony where minor personally uses weapon described in Penal Code section 16590].)

rehabilitation but because the court wished to deter other minors who might engage in sophisticated drug smuggling schemes.” (*Id.* at p. 560.) *Martha C.* noted “[t]here is nothing in the section suggesting that any consideration other than the minor’s nonamenability to rehabilitation is a proper basis for denying deferred entry of judgment.” (*Id.* at p. 561.) The court observed “denial [of DEJ] is proper only when the trial court finds the minor would not benefit from education, treatment and rehabilitation.” (*Id.* at p. 561.) But the court also noted “a court might find that the circumstances of a crime indicate a minor is not amenable to rehabilitation [citation], and on that basis deny DEJ” (*Id.* at p. 562.)

Here, the juvenile court did not deny DEJ because of “societal implications” or because it wished to deter other minors. Rather, the court concluded based on Anthony’s offenses, considered in conjunction with his age, maturity, educational background, family relationships, motivation, and other relevant factors, Anthony required more supervision than the DEJ procedure provided. (See *In re Sergio R.* (2003) 106 Cal.App.4th 597, 608 (*Sergio R.*) [juvenile court did not abuse its discretion in denying DEJ based on the minor’s gang ties, drug abuse, and possession of weapons, even though the minor’s youth and lack of a prior record weighed in favor of DEJ]; *In re Damian M.* (2010) 185 Cal.App.4th 1, 6 [juvenile court acted within its discretion in rejecting DEJ based on the minor’s sophisticated criminal activity].) Anthony was the instigator and perpetrator of harassing, assaultive, and racist conduct against several individuals on more than one occasion. Anthony’s mother felt her son had been unjustly accused, did not believe her son threatened the victim with scissors, and felt the “school blew the whole thing out of proportion.” She also believed her son may have been coaxed by friends to act out. Given mother’s feelings about her son’s behavior, the juvenile court reasonably could conclude a program of supervised probation was more suitable to rehabilitating Anthony than a program for deferring judgment. True, *Martha C.* stated denial of DEJ is proper only when the trial court finds the minor

would not benefit from the education, treatment and rehabilitation programs under the DEJ. But subsequent cases clarify that a trial court may conclude the circumstances of the crime and the minor's background render the minor unsuitable for DEJ because "'a more restrictive commitment'" is required. (*Joshua S.*, *supra*, 192 Cal.App.4th at p. 677, italics omitted, quoting from *Sergio R.*, *supra*, at p. 607.)

We also note the conditions of probation imposed by the court tracked the conditions of the proposed DEJ program. The court required Anthony to attend anger management counseling, and to visit the Museum of Tolerance and write an essay on his experience. The court also stated Anthony could return in a year and if he was doing well "we'll talk about withdrawing the plea, dismissing the case" We discern no abuse of discretion.

III

DISPOSITION

The judgment is affirmed.

ARONSON, J.

WE CONCUR:

MOORE, ACTING P. J.

THOMPSON, J.